NO. 78-117

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

GRAY-TAYLOR, INC., etc.,
Petitioner,

v.

HARRIS COUNTY, TEXAS, et al.
Respondents

RESPONDENT GOVERNMENT'S BRIEF

JOE RESWEBER
County Attorney
Harris County, Texas

ANTHONY D. SHEPPARD
Assistant County Attorney

DAVID H. GRAVES
Assistant County Attorney
1001 Preston, Suite 364
Houston, Texas 77002
(713) 221-5101

Attorneys for Respondent

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

TABLE OF CONTENTS

	Page
Background Statement	1
Issues Presented	5
Discussion of Issues	5
Prayer	18
EXHIBITS:	
#1 — Letter from Plaintiff's Attorney offering to settle the action for 50 cents on the dollar	22
#2 — Tax Collector's Certificate showing percentage of State and Local Taxes collected under the 1977 Plan	24
#3 — Certificate showing Plaintiff has not paid his 1977 personal property taxes	26
#4 — Certificate showing Plaintiff has paid his relevant prior years taxes *without* protest	28
#5 — Copy of Article 7345f, Vernon's Texas Statutes	31
#6 — Copy of Harris County's 1977 Ad Valorem Tax Plan	34
#7 — Tax Collector's Discussion of New Constitutional Amendment	39

LIST OF AUTHORITIES

CASES	Page
Beshear v. Weinzapfel, 474 F.2d 127 (C.A. 7, 1973)	13
Bland v. McHann, 463 F.2d 21 (C.A. 5, 1972), cert. denied 410 U.S. 966 (1973)	11
Burford v. Sun Oil Co., 319 U.S. 315 (1943)	9, 12
Charter Oak Insurance Co. v. Mann, 304 F.2d 166 (C.A. 8, 1962)	13
City of Houston v. Standard Triumph Motor Co., 347 F.2d 194 (C.A. 5, 1965), cert. denied 382 U.S. 974 (1966)	11
Colorado River Water Conservation District v. United States, 96 S.Ct. 1236 (1976)	8, 9, 12
County of Harris v. Ideal Cement Co., 290 F.Supp. 956 (S.D. Texas, 1968)	6
DeFunis v. Odegaard, 94 S.Ct. 1704 (1974)	5, 8

CASES — Page

Edelman v. Jordan, 94 S.Ct. 1347 (1974) 7
Fitzpatrick v. Bitzer, 96 S.Ct. 2666 (1976) 7
Fulton Market Cold Storage Co. v. Cullerton, No. 77-2133 (C.A. 7, 1978) 11, 12
Great Lakes Dredge and Dock Co. v. Huffman, 319 U.S. 293 (1943) 9
Harris County Commissioners Court v. Moore, 420 U.S. 77 (1974) 9
Huffman v. Pursue, Ltd., 95 S.Ct. 1200 (1975) 11, 16
Kerotest Mfg. v. C-O-Two Fire Equipment Co., 342 U.S. 180 (1952) 12
Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25 (1959) 12
Monell v. City of New York, 98 S.Ct. 2018 (1978) 7
National Assn. for the Advancement of Colored People v. Gennett, 360 U.S. 471 (1959) 12
N.L.R.B. v. Guernsey, 285 F.2d 8 (C.A. 6, 1960) 13
Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941) 9, 12
Sheaffer v. Warehouse Union, 408 F.2d 204 (C.A. D.C. 1969), cert. dened 89 S.Ct. 1996 13
State Steamship Co. v. Phillipine Airlines, 426 F.2d 803 (C.A. 9, 1970) 13
Williams v. Rubiera, 529 F.2d 470 (C.A. 5, 1977), cert. denied 431 U.S. 931 13
Younger v. Harris, 401 U.S. 37 (1971) 9

UNITED STATES CONSTITUTION

11th Amendment 4

UNITED STATES STATUTES

42 U.S.C. § 1983 18

TEXAS REVISED CIVIL STATUTES

Article 7345f 15

NO. 78-117

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

GRAY-TAYLOR, INC., etc.,
Petitioner,

v.

HARRIS COUNTY, TEXAS, et al.
Respondents

RESPONDENT GOVERNMENT'S BRIEF

BACKGROUND

TO THE HONORABLE COURT:

In Texas, prior to the institution of this suit, a statewide organization of new auto dealers agreed to initiate a concerted effort at the state and local levels to force reduction in ad valorem taxes on their inventories of automobiles and auto parts. Under Texas law all ad valorem taxes of the sort in issue are exacted through local units of government. The ad valorem taxes exacted by and in behalf of the *State of Texas* are collected through the 254 county governments in the State and Harris County, one alleged defendant herein, collects a significant percentage of the *State's* ad valorem taxes.

Sometime prior to June 17, 1977, when the suit in question was filed, the members of the Houston Auto-

mobile Dealers Association pooled their financial resources to institute this suit—first in State Court and secondly in Federal Court. Tom Gray, acting through his alter ego corporations was the front man. The dealers had been told by their attorneys that the County and other units of government would probably settle the entire matter quickly after suit because of the suit's threat to each unit's financial stability, including their crucial municipal bond ratings, etc.

On June 17, 1977, Tom Gray, acting through his closed corporation, "Tom Gray Datsun", filed suit in State Court and approximately an hour later Tom Gray, acting through a different closed corporation called "Gray-Taylor, Inc." filed an identical suit in Federal Court. The record reveals that Tom Gray Datsun (the Plaintiff in the State action) and Gray-Taylor, Inc. (the Plaintiff in the Federal action) are both closed corporations owned by almost exactly the same persons. Page 91, Appellants Appendix, Fifth Circuit:

> "T. G. MOTORS OF HOUSTON, C. A. File 13,947 (Plaintiff in State Suit)
>
> | | |
> |---|---|
> | 1. Incorporated | Mar. 29, 1971 |
> | 2. Registered Agent: | Tom Gray |
> | 3. Incorporators: | Carlisle, Urban, Joel Collidge, John Feldt |
> | 4. Directors: | Tom Gray, Robert H. Taylor, B. G. Moore |
>
> GRAY-TAYLOR, INC., C. A. File 13,946 (Plaintiff in Federal Suit)
>
> | | |
> |---|---|
> | 1. Incorporated: | Mar. 29, 1969 |
> | 2. Registered Agent: | Tom Gray |
> | 3. Incorporators: | Carlisle Urban, Brian Scott Frank Naegle |
> | 4. Directors: | Tom Gray, Bob Taylor, John M. Gray" |

For purposes of this suit and the issues contained herein, the State Plaintiff and the Federal Plaintiff are the same. This is especially so since the alleged "classes" Tom Gray sought and seeks to represent are the same and the wording in the pleadings is virtually identical.

It should be noted from the exhibits filed by Plaintiffs below that the original pleading filed by Gray-Taylor, Inc., only sought equitable relief. After filing a motion for preliminary injunction and a lengthy trial brief in furtherance of their equitable relief, Gray-Taylor finally amended their original Federal pleadings to request "damages" in addition to the other allegations. The claim for unspecified "damages" was clearly an afterthought and the primary thrust of the suits lay in equity.

Judge Carl O. Bue, the constitutional trial forum, is appointed by law in such circumstances to view the entire documentary record along with the totality of the evidence and decide the issues presented by motion. In view of the entire record of this case Judge Bue decided *in his discretion* that abstention was appropriate. Plaintiff, petitioner now seeks to have a higher Court rule that said wise Court has abused its discretion. That is, Appellants would have a higher Court displace the constitutional discretion of the Federal District Court where the District Court has carefully weighed every salient element of the action over a significant period of time and entered his succinct ruling thereafter. Said Court has proven through its tenure that it is not one to shirk its constitutional duties, but in fact has normally construed the parameters of its jurisdiction and authority liberally in every way.

Petitioners herein have pursued their parallel State action with vigor. Said Plaintiffs have dragged Respond-

ents to several Texas cities for involved depositions and have held several hearings in State Court in that parallel case. We are sure it is the consummate wish of every Plaintiff to have as many bites at the apple as possible, but Courts should not encourage a multiplicity of parallel suits nor encourage the shotgun approach in an era of overcrowded dockets at every level of government.

Additionally, Respondents say that this suit, as originally filed and as the closed pleadings facially read, is wholly moot as to the equitable relief sought and is incapable of Federal determination as to damages. This latter assertion is so because the *State of Texas* is an indispensable party to this suit, and said sovereign is not subject to suit in the subject forum under the 11th Amendment to the United States Constitution. The case is moot because all of the equitable relief sought facially concerned the *1977 tax rolls* and 98% of the 1977 taxes with which the Plaintiffs were concerned have been collected as of the date of this brief. Furthermore, the Honorable Court should note that Petitioner Plaintiff herein *has not paid* the very taxes he is crying about herein.

The Defendants in this suit are Harris County, Texas, Carl S. Smith, Tax Assessor-Collector, and the five members of the Harris County Commissioners Court (Board of Equalization).

Plaintiff also claims in his brief from the Circuit that he is seeking to act herein, in part, as a private attorney general "pro bono publico." Alas, the would-be "attorney general" offered to settle the entire matter should defendant government cut *the auto dealers'* taxes to 50 cents on the dollar—pro malo publico. See the exhibit enclosed in this connection.

LIST OF ISSUES

1. **THE PLAINTIFFS' PLEA FOR EQUITABLE RELIEF IS MOOT.**
2. **THE STATE OF TEXAS IS AN INDISPENSABLE PARTY HERETO WITH SOVEREIGN IMMUNITY.**
3. **THE TRIAL COURT CORRECTLY ABSTAINED.**
4. **THE PLAINTIFF FAILED TO SEEK LOCAL STATUTORY REMEDIES ENACTED TO MEET THE ALLEGED WRONGS COMPLAINED OF.**
5. **THE STATE OF TEXAS HAS NOT TURNED A DEAF EAR TO PLEAS FOR TAX RELIEF.**

THE PLAINTIFF'S PLEA FOR EQUITABLE RELIEF IS MOOT

The Honorable Supreme Court must know that Plaintiff's claim for equitable relief is now moot. *DeFunis v. Odegaard,* 94 S.Ct. 1704-1707. Tom Gray, complaining herein through his closed corporation, Gray-Taylor, Inc., has complained in his original pleading about alleged defects in the 1977 State and County tax rolls. The State and County's 1977 tax plan has now been implemented and brought to fruition to the extent that 98% of the ad valorem taxes addressed therein have been collected. At this juncture it is revealed that the Plaintiff-Petitioner *has not yet paid the 1977* ad valorem taxes that he has been so grievously crying about from one end of Texas to the other, as well as to this Honorable Court. In this connection see the Government's exhibit attached hereto as to the percentage of the State's 1977 taxes collected, as well as the certificate of nonpayment of Plaintiff's taxes. Furthermore, plaintiff has paid his relevant prior years taxes *without protest.*

THE STATE OF TEXAS IS AN INDISPENSABLE PARTY HERETO WITH SOVEREIGN IMMUNITY

In this connection the record reveals that Plaintiff failed to sue several necessary and indispensable parties to this suit. Harris County is an arm of the State of Texas in all ways germane to this suit, and said unit of government also collects taxes for several other *separate and independent units of local government.* In Texas, the counties collect the State's ad valorem taxes and a significant amount of what Harris County collects is transmitted to the State Comptroller as purely State funds. All of these units are facially necessary in the context of the Plaintiff's action, but none were joined. See exhibits attached hereto. Please see *County of Harris v. Ideal Cement Company,* 290 F.Supp. 956 (S.D. Texas, 1968).

> "A determination of whether a state is a real party at interest is not based on the mere presence or absence of the state as a party of record, *but rather it is based on a consideration of the nature of the case as presented by the whole record.* See Ex parte State of Nebraska, 209 U.S. 436, 28 S.Ct. 581, 52 L.Ed. 876 (1908); De Long Corp. v. Oregon State Highway Comm'n., 233 F.Supp. 7 (D.Ore. 1964), aff'd, 343 F.2d 911 (9th Cir.), cert. denied, 382 U.S. 877, 86 S.Ct. 161, 15 L.Ed. 2d 119 (1965); Weyerhaeuser Co. v. State Roads Comm'n of Maryland, 187 F.Supp. 766 (D.Md. 1960). Courts making this determination have based their decisions on various circumstantial factors, such as (1) whether the state agency which is the party to the suit is an arm or alter ego of the state, (2) whether the subject matter involved is a governmental function as distinguished from a private right, and (3) *the pecuniary and beneficial interests of the*

> *state generally.* Weyerhaeuser Co. v. State Roads Comm'n of Maryland, 187 F.Supp. 766 (D.Md. 1960), see e.g., South Caroline State Ports Authority v. Seaboard Air Line R.R., 124 F.Supp. 533 (E.D.S.C. 1954) (Authority was arm of state); State of Indiana to the Use of Delaware County v. Alleghany Oil Co., 85 F. 870 (C.C.D.Ind. 1898) (preservation of natural resources is governmental function); People of State of California ex rel. McColgan v. Bruce, 129 F.2d 421, 147 A.L.R. 782 (9th Cir.), cert denied, 317 U.S. 678, 63 S.Ct. 157, 87 L.Ed. 544 (1944) (*suit to recover state income tax is to the beneficial interest of the state*). *Consideration of any one of these factors in the present case leads to the conclusion that the State of Texas is a real party at interest.*"
>
> [There are some especially salient footnotes in this case also] (Emphasis added)

The State of Texas is a crucial party at interest and is not subject to suit in Federal Court pursuant to many authorities, but especially *Edelman v. Jordan,* 94 S.Ct. 1347 (1974). This is not a civil rights suit of the type that does lie against the State such as set forth in *Fitzpatrick v. Bitzer,* 96 S.Ct. 2666 (1976). The Honorable Court's latest holding in *Monell v. City of New York,* 98 S.Ct. 2018 does not, of course, make the State of Texas a "person" under 42 U.S. Code 1983. The rationale of that cause has no application to the 50 States of this Union—"Our holding today is, of course, limited to local governmental units." It is quite beyond dispute that this cause as filed and amended in the Federal District Court as to the equitable relief and the damages sought was calculated to impact directly, among other things, *the Treasury of the State of Texas.*

THE TRIAL COURT CORRECTLY ABSTAINED

A principal issue at bar concerns the District Court's invocation of the Abstention Doctrine and rule of comity. Plaintiffs' Amended Complaint, though tardy, requested three basic types of relief: (1) an *injunction* preventing adoption and implementation of taxation scheme; (2) a *mandatory injunction* or *mandamus* to adopt a proper taxation scheme; (3) *damages,* measured by previously paid taxes. It must be stated now that under relevant State law taxes remitted *without* protest are not recoverable. Plaintiff has never paid any tax to the State of County under protest and as related above has yet to remit the 1977 personal property tax with which he is primarily concerned. The statute of limitations is two years for the claim for damages and enclosed herewith as an exhibit is a certificate of the tax collector that said pertinent taxes in relevant past years were paid in the usual course of business *without protest.* All of these revelations go back to the ruling of this Court in *DeFunis* (supra) wherein the Court said, "Federal courts are without power to decide questions that cannot affect rights of litigants before them."

The doctrines of abstention and comity now lie in a somewhat protean state and courts have had apparent difficulty drawing the various gossamer distinctions inherent in the field. Perhaps the clearest pronouncement in the area has come in *Colorado River Water Conservation District v. United States,* 96 S.Ct. 1236 (1976). Speaking for the Court, Mr. Justice Brennan distinguished three categories of abstention. These are: (1) *Pullman* type: cases in which a federal constitutional issue is presented which might be mooted or presented in a different posture by a state court's determination of

crucial state law. *Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496 (1941); *Harris County Commissioners Court v. Moore,* 420 U.S. 77 (1974). (2) *Burford* type—cases which present difficult state law questions which bear on policy problems of substantial public import whose importance transcends the results of the case at bar. For this type of abstention, it is enough that federal intervention would be disruptive of state efforts to establish a coherent policy. *Burford v. Sun Oil Co.,* 319 U.S. 315 (1943). (3) *Younger* type: cases where, absent bad faith, harrassment, or patently invalid state statute, federal jurisdiction is invoked to restrain state criminal proceeding, state nuisance proceedings, or collection of state taxes. *Younger v. Harris,* 401 U.S. 37 (1971); *Great Lakes Dredge and Dock Co. v. Huffman,* 319 U.S. 293 (1943).

Colorado River (supra) established a fourth type of abstention, although it did not call it abstention. Basically, this fourth type arises where there is a concurrent or parallel state court proceeding and the doctrine is invoked to avoid duplicative, wasteful litigation. However, to invoke abstention for this reason, the circumstances must be somewhat "exceptional" because of the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." Of course, this later corollary applies to all of the rules of abstention and is ever part of each decision.

The case at bar contains elements of each of the four categories discussed above. They are, (1) Plaintiffs' alleged violations of federal constitutional rights resulting from the State's taxation scheme. (The federal issues may well be mooted through the process of state proceedings). (2) the validity of the ad valorem tax system

presents difficult, yet unsettled, local questions—questions which are uniquely ones of Texas state law. The Federal Courts and Congress have regularly recognized that interference with state taxation would be disruptive of state efforts to establish a coherent policy. (3) Plaintiff's request for an injunction is clearly appropriate for abstention since it seeks to restrain the collection of state taxes. (4) Finally, this appears to be a proper case for abstention to avoid duplicative litigation. Here not only are the three factors discussed above present, but an identical class action filed by the same person through another closed corporation asking for the same relief was filed in state court prior to the filing of the Federal action. Plaintiff also is a member of the alleged interchangeable class in each case. Given the uniquely local nature of the issues involved and the fact that the existence of the federal issues depends upon the resolution of the circumlocuted state issues, this was and is a proper case for abstention.

Petitioners say, on page 6 of their Brief, that the 5th Circuit opinion herein suggests that discriminatory implementation of a local property tax plan is beyond Federal court review. Clearly, any time a Federal court abstains, a Plaintiff is denied immediate Federal court review, but the whole point of abstention is to allow the state courts to resolve the paramount state issues which removes the necessity to address the general Federal issues at the threshold. At the conclusion of state court proceedings, a Plaintiff may still appeal to the Federal System if there are any salient constitutional issues left. Thus, abstention absolutely does not deny ultimate Federal court review.

As Petitioner's Brief points out, the 5th Circuit opinion did not discuss the adequacy of the state law remedy. However, it has previously held in comparable cases that the Texas state remedies were adequate. *City of Houston v. Standard-Triumph Motor Company,* 347 F.2d 194 (1965), cert denied 382 U.S. 974 (1966). Furthermore the record below reveals that the circuit weighed exhaustive briefs on that subject. Petitioner's principal complaint appears to be that challenges to state property taxation in the state court generally have not been successful. State remedies need not be the best available or even equal to or better than the federal remedies in order to be "adequate." *Huffman v. Pursue, Ltd.,* 95 S.Ct. 1200 (1975); *Bland v. McHann,* 463 F.2d 21, 29 (C.A. 5th 1972), cert. denied 410 U.S. 966 (1973).

Petitioner's Supplemental Brief contends that the recent decision of the 7th Circuit in *Fulton Market Cold Storage Company v. Cullerton,* No. 77-2133 (1978), squarely conflicts with the 5th Circuit decision in case at bar. However, the two cases are distinguishable on their facts. In *Fulton Market,* Plaintiff filed his action in Federal court, *but there was no parallel state court proceeding seeking to litigate the same issue.* In the instant case, Petitioner is a member of the alleged class seeking exactly the same relief in state court. Furthermore, Tom Gray is the alter ego of the closed corporations filing and attempting to pursue the respective suits in State and Federal Court. Thus, present in this case is an important additional consideration for abstention not present in *Fulton Market.* Furthermore, the relevant state issues in *Fulton Market* were apparently not nearly so unsettled as the convoluted Texas law in this field.

Additionally, Plaintiff in *Fulton Market* sought only damages; in the instant case Petitioner originally sought only equitable relief and then as an after thought amended for damages. The principles underlying *Colorado River* type abstention or dismissal "rest on considerations of '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.' " *Colorado River Water Conservation Dist. v. United States, supra* at 817, *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U.S. 180, 183 (1952). These principles would indicate that in the case at bar the damage and injunction issues should be tried together and Plaintiff has pursued his State suit with vigor.

In *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 501 (1941), the Court discussed cases in which the federal courts did not intervene saying they

> "reflect a doctrine of abstention . . . whereby the federal courts, "*exercising a wise discretion,*" restrain their authority . . ." (emphasis added)

In *Burford v. Sun Oil Co.*, 319 U.S. 315, 332 (1943), the Court said that the federal court should exercise "equitable discretion" to give the state courts an opportunity to resolve the case. The Court stated that "[t]he District Court was . . . exercising a fair and well-considered *judicial discretion* in staying proceedings . . ." in *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.W. 25, 30 (1959). In *National Assn. for the Advancement of Colored People v. Bennett*, 360 U.S. 471 (1959) the Supreme Court remanded to the District Court for it to exercise its considered *discretion* as to whether abstention should be invoked.

Essentially abstention and comity are discretionary in nature, since the best panoramic view of a cause normally belongs to the trial forum. Generally, a Court of Appeals should only review district court judgments for errors of law and any *abuse of discretion* committed in concoction thereof. The burden of demonstrating an abuse of discretion allegedly committed by a District Court is on an appellant and the burden is a *peculiarly heavy one.* In fact, it has been said that if reasonable persons could differ as to the propriety of action taken by the trial court, then it cannot be said that the trial court abused its discretion. *Beshear v. Weinzapfel* (infra). In this cause the trial forum had the threshold duty to review all of the salient facets of the case as same related to the issue of abstention and comity. Clearly the paramount issues are not black and white, but indeed hinge on varying shades of gray. The issues were all well briefed and enough time was taken to weigh every nuance. In this connection see *Sheaffer v. Warehouse Union*, 408 F.2d 204 (D.C. Circuit 1969, Cert. Den. 89 S.Ct. 1996; *State Steamship Co. v. Philippines Airlines*, 426 F.2d 803 (Ninth Cir. 1970); *Beshear v. Weinzapfel*, 474 F.2d 127 (7th Circuit 1973,); *Charter Oak Insurance v. Mann*, 304 F.2d 166 (Eighth Circuit, 1962); *N.L.R.B. v. Gurnsey et al*, 285 F.2d 8 (6th Circuit 1960).

Some of the language of *Williams v. Rubiera*, 539 F.2d 470 (5th Circuit 1977, Rehearing en banc denied 544 F.2d 518, Cert. den. 431 U.S. 931) is especially apropos to the matter at bar. There the Court said:

"[discussing Younger v. Harris, 91 S.Ct. 746 (1971)]

> "Younger rested on the reciprocal doctrine of federal-state comity, the fundamental policy against

federal interference with state criminal prosecutions. . . .

[*note that such fundamental policy is comparable to the fundamental policy at bar against Federal injunctive interference with a local tax plan*]

"An injunction against a trial without appointed counsel would, of course, be direct federal interference in the state criminal prosecution. The issuance of only declaratory relief would not seem to alter the result. In Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971), the Supreme Court held that those principles making federal injunctive relief impermissible would also apply to declaratory judgments.

"[O]rdinarily a declaratory judgment will result in precisely the same interference with and disruption of state proceedings that the long-standing policy limiting injunctions was designed to avoid. 401 U.S. at 72, 91 S.Ct. at 767. The Court found two reasons for this conclusions: (1) a federal court may need to grant further relief, such as a subsequent injunction, to effectuate the declaratory judgment; and (2) the declaratory judgment has practically the same impact on the state proceeding as a formal injunction.

The district court here recognized the impact declaratory relief could have. To grant the requested relief would have the intrusive impact on the state proceeding that Younger and its progeny abhorred.

"Plaintiff argues that Younger v. Harris has no application to this case since there is no opportunity to vindicate her constitutional rights in state court. The Supreme Court recognized that Younger 'presupposes the opportunity to raise and have timely decided by a competent state tribunal the federal

issues involved.' Gibson v. Berryhill, 411 U.S. 564, 577, 93 S.Ct. 1689, 1697, 36 L.Ed.2d 488 (1973). *Nothing in the record, however, indicates that the Florida state courts would not be the proper forum to fairly decide plaintiff's constitutional claims. This was the position taken by the district court. . . .*

"The need to allow state courts to adjudicate federal constitutional questions in cases pending before those tribunals is the workable result of comity and federalism. Unless a situation such as Gibson is present there is no reason to doubt that state courts can adequately entertain plaintiff's claims. Article VI of the United States Constitution 'declares that "the Judges in every State shall be bound" by the Federal Constitution, laws and treaties.' Huffman v. Pursue, Ltd., 420 U.S. 592, at 611, 95 S.Ct. 1200, 1211, 43 L.Ed.2d 482 (1975). *Thus the state courts share equivalently with the federal courts the responsibility of protecting constitutional guarantees.* See Schlesinger v. Councilman, supra, at 755-756, 95 S.Ct. 1300. *Absent facts to the contrary it must be presumed that this obligation will be fulfilled.*

"The concern of comity is not whether a state litigant would win or lose, but whether the claim to constitutional right would be fairly considered. This point was recognized by the Supreme Court in Huffman v. Pursue, Ltd., supra, at 608-611, 95 S.Ct. 1200." (Emphasis added)

THE PLAINTIFF FAILED TO SEEK LOCAL STATUTORY REMEDIES ENACTED TO MEET THE ALLEGED WRONGS COMPLAINED OF

In 1977, the Texas Legislature enacted Article 7345f, Tex. Rev. Civ. Stat. Said statute is enclosed herewith in the appendix and same became effective on June 16,

1977. The Plaintiff had plenty of time to utilize it. The statute has not been interpreted yet by any State Court, but its unequivocal terms allow great relief for taxpayers who can prove a valid case. The Plaintiffs elected to forego all of the potential relief existing under the new law and sought rather the tortuous route taken. Of course, the patent twists and turns encountered on that road would, to the uninitiated, seem to lend force to Plaintiffs' howls of local "foul." As stated by this Court in Huffman v. Pursue, Ltd., 95 S.Ct. 1200 (1975):

> "The concern of comity is not whether a state litigant would win or lose, but whether the claim to be constitutional right would be fairly considered."

It *is* the concern of comity and abstention that a complaining appellant at the present juncture has patently failed to avail himself of rational local remedies, and also has failed to refer this Court to such clearly germane statutes which stand paramount to prime issues herein.

THE STATE OF TEXAS HAS NOT TURNED A DEAF EAR TO PLEAS FOR TAX RELIEF

The Plaintiff herein has primarily based his action upon the allegation that the State and County knowingly omit large amounts of taxable personal property from the ad valorem tax rolls. They especially complain of the number of private automobiles and "intangibles" left off the rolls such as bank accounts, etc. The only arguable grounds for such a suit is that the Texas Constitution makes all such property taxable with only very limited exceptions. In other words, Texas could constitutionally categorize property subject to taxation and thus avoid equal protection and related claims, but to date they have not done so.

The Texas Legislature, in a special called session in the Summer of 1978, has finally addressed these and other problems. On November 7, 1978, the people of Texas will vote upon the proposed constitutional changes and all experts agree that the tax relief amendment will become law in the near future. Every official knows that within a very short time, *less than a year,* the Legislature will exempt from taxation all of the sort of personal property that tends to cause problems. This is especially so of household furniture not used commercially, private household automobiles not not used commercially, intangibles such as bank deposits, stocks and bonds, etc. Commercial personal property will remain taxable.

Generally speaking, it is obvious that taxing authorities at every level fail to tax *all* that is theoretically within their bailiwick. The experts agree that as to the Federal Income Tax, there is a huge "underground" economy in the United States consisting of billions of dollars in taxable income which completely escape I.R.S. scrutiny. All of the defenses which would be raised by the I.R.S. in the context of their known failures are the very same, generally speaking, that are raised by local governments in suits such as the one at bar. That is, the success of the system rests primarily upon *voluntary* compliance coupled with a reasonable governmental ability to punish the evader. In this connection Defendants have attached hereto the 1977 Ad Valorem Tax Plan For Harris County, along with all of the newly proposed constitutional amendments for the State of Texas. The new

amendments clearly will help solve some of the State's lingering problems in this field. To the extent that this Court concerns itself with the "overview," Texas is on the final road to solving many of its ad valorem tax problems.

CONCLUSION

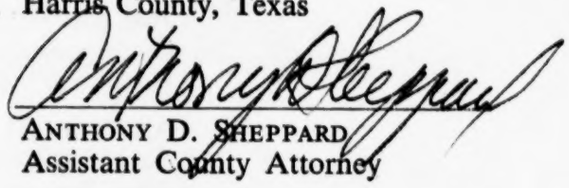
The weight of the record from below clearly denotes that the District Court and the Fifth Circuit Court of Appeals carefully weighed the issues of abstention and comity, including the "damages plea," and in their discretion, based upon the totality of the law and evidence, decided against Plaintiff herein. Those courts were wholly correct and no abuse of discretion by any officer has been shown within or without the record.

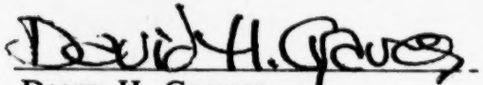
The issue of mootness arises only if the Court wishes to reach it, and if the Court does reach it, then the holding should be in Defendants' favor. The issue of sovereign immunity under the Eleventh Amendment arises only if the Court wishes to reach it, and if the Court does reach it, then the holding should be that the State of Texas is a necessary and indispensable party to this action and is immune from suit herein. Said sovereign is not a "person" under 42 U.S. Code 1983 and is not subject to suit in Federal Court under any other relevant law and the totality of the circumstances of this case.

WHEREFORE, PREMISES CONSIDERED, Writ of Certiorari should be in all ways *Denied* and the lower Court's decision *Affirmed.*

Respectfully submitted,

JOE RESWEBER
County Attorney
Harris County, Texas

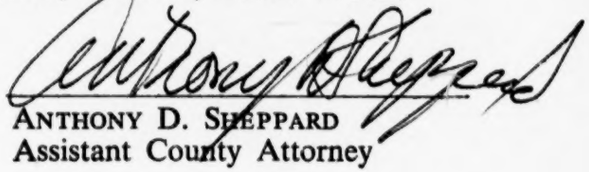
By: 
ANTHONY D. SHEPPARD
Assistant County Attorney

By: 
DAVID H. GRAVES
Assistant County Attorney
1001 Preston, Suite 364
Houston, Texas 77002
(713) 221-5101

Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that a true copy of this instrument and all related materials was mailed to opposing counsel at 28th Floor, 1100 Milam Street, Houston, Texas 77002.



ANTHONY D. SHEPPARD
Assistant County Attorney

ADOPTION OF PLAINTIFF'S APPENDICES

Now comes Defendants-Respondents and said parties adopt the Plaintiff-Petitioner's Appendices consisting of the District Court's Judgment, the Magistrate's Recommendation to the District Court, the Fifth Circuit's Per Curiam Affirmance, the Fifth Circuit's Denial of Rehearing, and the Fifth Circuit's Judgment.

JOE RESWEBER
County Attorney
Harris County, Texas

ANTHONY D. SHEPPARD
Assistant County Attorney
1001 Preston, Suite 364
Houston, Texas 77002
(713) 221-5101

EXHIBITS

No. 1—Letter from Plaintiff's Attorney offering to settle the action for 50 cents on the dollar.

No. 2—Tax Collector's Certificate showing percentage of State and Local Taxes collected under the 1977 Plan.

No. 3—Certificate showing Plaintiff has not paid his 1977 personal property taxes.

No. 4—Certificate showing Plaintiff has paid his relevant prior years taxes *without* protest.

No. 5—Copy of Article 7345f, Tex. Rev. Civ. Stat.

No. 6—Copy of Harris County's 1977 Ad Valorem Tax Plan.

No. 7—Tax Collector's Discussion of New Constitutional Amendment.

EXHIBIT NO. 1

CHAMBERLAIN, HRDLICKA, WHITE & WATERS
Attorneys at Law
28th Floor
1100 Milam Street
Houston, Texas 77002

Area Code 713
657-1818

August 2, 1977

Joe G. Resweber, Esq.
County Attorney
301 San Jacinto, Room 202
Houston, Texas 77002

Re: C.A. No. H-77-949; Gray Taylor, Inc., et al. v. Harris County, et al. and No. 1,131,363; T. G. Motors, Inc. of Houston d/b/a Tom Gray Datsun v. Carl S. Smith, et al. 164th Judicial District Court, Harris County.

Dear Mr. Resweber:

Pursuant to our telephone conversation of today, we propose to settle this litigation on the following basis: All personal property of the automobile dealers in Harris County will be assessed for the current year at 50% of inventory or other cost (prior to application of the appropriate 32% assessment figure), and, barring the establishment of new procedures for including all property on the tax rolls, it is understood that this basis for taxation will continue indefinitely into the future.

As I noted to you, we feel this settlement can be justified under present practices actually employed by the Tax Assessor for equalizing personal property taxes. In this regard, you might consider Mr. Smith's deposition testimony as to how he has "equalized" his own personal

property tax renditions in prior years. Moreover, significant recent developments suggest to us that the Defendants in this litigation may not have considered its ramifications.

We request a conference attended by all persons in a position of authority to settle these cases. We suggest a date of August 8, 1977. We will be prepared at this conference to develop in detail the various considerations which we feel support this settlement and make it acceptable to the Defendants.

As I finally noted to you, we feel that this will be the last realistic opportunity to pursue a settlement. If this attempt at settlement fails, the matter will be litigated to a final conclusion.

Sincerely yours,

/s/ JOHN A. TOWNSEND
John A. Townsend

JAT/cf

EXHIBIT NO. 2

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This is to certify that I, Carl S. Smith, Tax Assessor-Collector in and for the State of Texas, County of Harris, am required by State Law to assess and collect taxes for the State of Texas and Harris County and Harris County-Wide Districts.

Detailed below are the total state taxes levied for 1977 and the total collections to date with the approximate percentage of collections which have been collected and reported to the various authorities.

Also listed are the County and County-Wide Districts showing the amount of taxes charged and the approximate amount of collections to date with the percentage of collections to date.

	Total Charged To The Roll	Total Collections To Date	Percentage of Collections
State	$ 10,468,944.25	$ 10,182,131.00	98.00%
County & County-Wide Districts			
County §			
Port Authority §			
School Equalization §			
Flood Control §			

Hospital §			
San Jacinto J.C. (Junior College) §			
North Harris County §			
J.C. (Junior College) §	$198,211,275.63	$194,290,517.00	98.00%

I hereby certify that the above is true and correct according to the records of the Harris County Tax Office as of the 5th day of October, 1978.

/s/ CARL S. SMITH
Carl S. Smith
Tax Assessor-Collector
Harris County, Texas

Subscribed and sworn to before me this 5th day of October, 1978.

/s/ BETTY SHEPHERD
Notary Public in and for
Harris County, Texas

SEAL

EXHIBIT NO. 3

Office of
CARL S. SMITH
Assessor and Collector of Taxes
Harris County
Houston, Texas 77002

October 5, 1978

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This is to certify that the records of the Harris County Tax Office reflect that the *1977* taxes on Gray-Taylor, Inc., d/b/a "Jimmy Green Chevrolet" are due and unpaid in the amount shown on the attached statement.

/s/ CARL S. SMITH
Carl S. Smith
Tax Assessor-Collector
Harris County, Texas

SEAL

CARL S. SMITH
Assessor and Collector of Taxes, Harris County
HOUSTON, TEXAS
Phone 224-1919, Sta. 291

Statement of Tax due, as shown by the Delinquent Tax Records of Harris County, Texas

Accts 86-26255

ACCOUNT NO.: Vol. | Page | Sub. | Item

(Acct.# ______)

NAME, ADDRESS AND PROPERTY DESCRIPTION
GREEN, JIMMIE CHEVROLET
P O BOX 34009
HOUSTON, TEX. 77034
2611 S SHEPHERD

To Whom Assessed as Shown by Tax Records — PAGE NO.	LINE NO.	Years Delinquent	STATE TAX	Penalty and Interest	County & County Wide Districts Tax	Penalty and Interest	Drainage District	Penalty and Interest	Jr. College School or Village	Penalty and Interest		PERSONAL PROPERTY	Costs	TOTALS OF EACH YEAR
P-17660		1977	1287.19	160.90	23.684.30	2960.54						VALUE - 1,287,190	–	28.092.93
TOTALS														

STATE COST
TOTAL THIS PAGE
TOTAL FORWARDED
TOTAL DELINQUENT TAX DUE (With Penalty, Interest and Cost)

STATE OF TEXAS
County of Harris

I hereby certify that the above Statement of Delinquent Taxes due and unpaid in this County is true and correct according to the Rolls and Delinquent Tax Records in this, Harris County, Texas.

In testimony whereof, witness my hand and seal of office this 3rd day of Oct 1978

CARL S. SMITH
Assessor and Collector of Taxes of Harris County, Texas

By [signature] Deputy

PLEASE NOTE

INTEREST AND PENALTY FIGURED TO OCT 31 1978 197__
ADDITIONAL CHARGES AFTER THIS DATE

THIS IS NOT A RECEIPT

PLEASE RETURN THIS STATEMENT WITH REMITTANCE

PAY THIS AMOUNT → 28.092.93

EXHIBIT NO. 4

Office of
CARL S. SMITH
Assessor and Collector of Texas
Harris County
Houston, Texas 77002

October 12, 1978

The Honorable Joe Resweber
County Attorney
Harris County
Houston, Texas 77002

Attention: Mr. Anthony Sheppard

In re: 1975 Personal Property Taxes
Acct. No. 1-00-26235-1
1976 Personal Property Taxes
Acct. No. 2-00-26235-0
"Gray-Taylor, Inc.," d/b/a
Jimmie Green Chevrolet

Dear Sir:

We have reviewed our records for the years 1975 and 1976 on the above accounts, and we find no notation which reflects that the payments were made under protest.

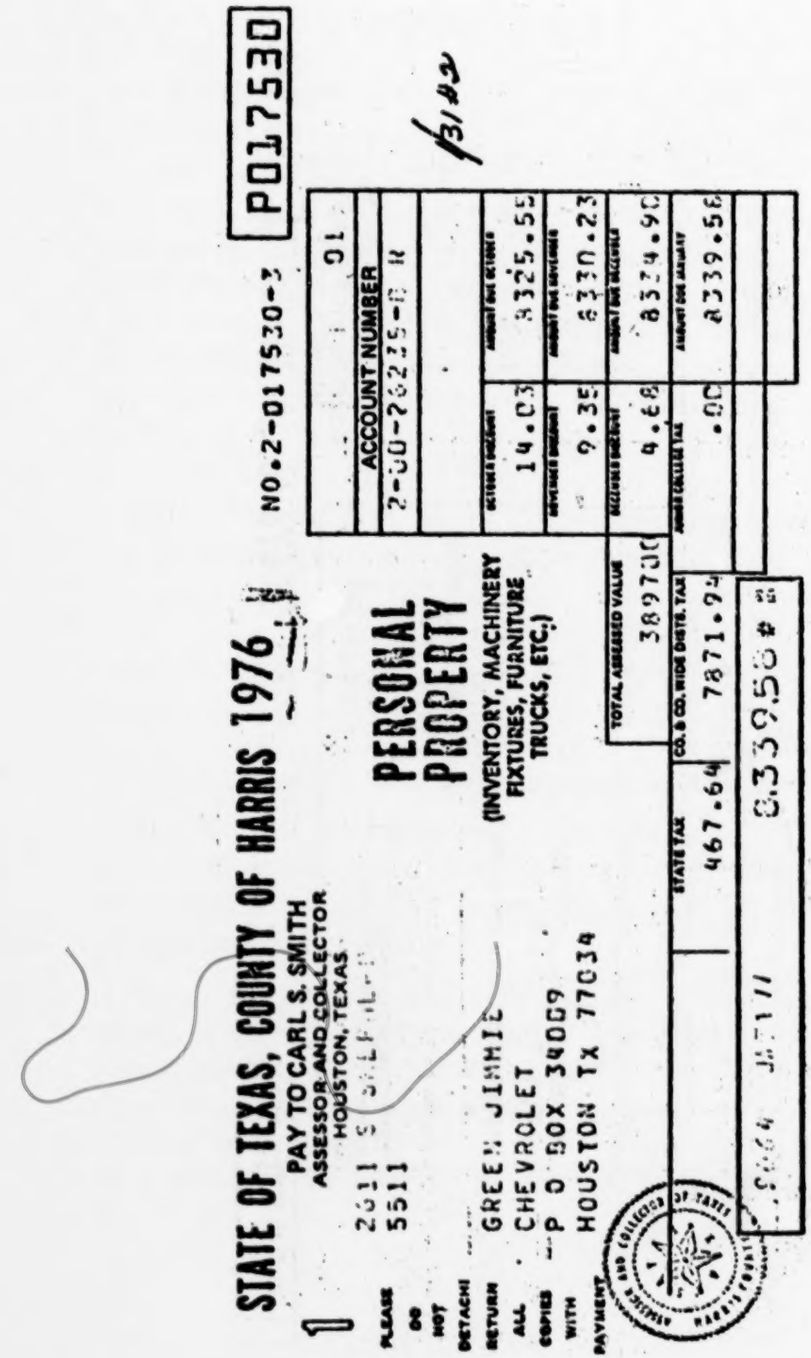
Attached are copies of the receipts for each of these years.

Yours very truly,

/s/ CARL S. SMITH
Carl S. Smith
Tax Assessor-Collector
Harris County, Texas

CSS:bs
Attachments

SEAL



STATE OF TEXAS, COUNTY OF HARRIS 1975

CARL S. SMITH
ASSESSOR AND COLLECTOR
HOUSTON, TEXAS

HOUSTON

PD18264

PERSONAL PROPERTY
(INVENTORY, MACHINERY FIXTURES, FURNITURE TRUCKS, ETC.)

ACCOUNT NUMBER 1-00-26235-1

PLEASE DO NOT DETACH BELOW ALL COPIES WITH PAYMENT

GREEN JIMMIE
CHEVROLET
P O BOX 39009
HOUSTON TX 77034

2411 S SHEPHERD

TOTAL ASSESSED VALUE 23,340

STATE TAX 284.49

CO. & CO. WIDE DEBT. TAX 472.55

EXHIBIT NO. 5

Art. 7345f. Right of appeal by property owner

Time for filing petition for review

Section 1. A property owner is entitled to appeal a decision of any board of equalization to a district court of the State of Texas. A party who appeals to a district court must file a petition for review with the district court within 45 days after the tax roll containing the value involved is approved by the taxing authority.

Venue

Sec. 2. Venue is in the county in which the board of equalization that made the decision is located.

Trial by jury

Sec. 3. Any party is entitled to a trial by jury on demand.

Value of property fixed

Sec. 4. (a) The issue to be determined by the district court in an appeal is whether or not the value of the property in question as ascertained by the board of equalization is in error.

(b) If the court or jury finds that the value as ascertained by the board of equalization is in error, meaning it is higher than the value set out by the property owner in a rendition filed prior to the board of equalization hearings as required by law, then the court or jury shall fix a value for the property in question as of January 1

of the tax year in controversy. In fixing the value of the property in question, the court or jury shall determine the cash market value and multiply that value by the assessment ratio, if any, in effect for the taxing authority involved.

(c) The value affixed by the court or jury pursuant to Subsection (b) above shall be binding on the taxing authority or authorities involved in the lawsuit for the tax year in question and for the succeeding tax year. However, in the succeeding tax year the taxing authority may add the value of subsequent improvements to the property, if any, to the value affixed by the court or jury.

Defense to appeal

Sec. 5. When established by a preponderance of the evidence, it shall be a defense to an appeal under this article that the taxpayer failed to exercise good faith in estimating the cash market value set out in the rendition required in Subsection (b) of Section 4 of this article. A taxpayer does not fail to exercise good faith for purposes of this section if he makes a good faith effort to estimate the cash market value of the property and the assessment ratio, if any, in effect for the taxing authority and renders the value determined by multiplying his estimate of cash market value by the assessment ratio. A taxpayer shall be required to file with the board of equalization a sworn affidavit, in addition to the rendition, prior to invoking the provisions of this article but shall not be required to appear personally or by a representative.

Rights cumulative

Sec. 6. The rights afforded taxpayers under this article are cumulative and do not preempt other remedies granted by statute or evolving by common law.

Injunctive or restraining order relief

Sec. 7. The cause of action herein granted does not expand upon taxpayers' rights to sue for an injunction or restraining order as a member of a class. Rights granted hereunder are specifically prohibited from being the basis of injunctive or restraining order relief in a class action suit seeking to enjoin the putting into effect of a tax plan of a taxing authority.

Added by Acts 1977, 65th Leg., p. 1912, ch. 764, eff. June 16, 1977.

EXHIBIT NO. 6

(S E A L)

OFFICE OF
CARL S. SMITH
Assessor and Collector of Taxes
HARRIS COUNTY
Houston, Texas 77002

HARRIS COUNTY'S
AD VALOREM TAX PLAN

I will put all property, real and personal, on the Harris County Tax Rolls where, in my discretion and opinion, I have enough legal data to do so. In the case of real property, the county and state have an automatic lien on such property, whether or not, generally speaking, we know who owns or claims title to same.

In the case of personal property, which for the most part is movable and in a constant state of flux, we have no such lien, and more and better data as to ownership is necessary before a valid collectible assessment can be made.

In the case of taxes on all property, real and personal, I must depend largely upon voluntary rendition of the property by the taxpayer.

If there is no rendition, then at the appropriate time of year, I must attempt to assess as much taxable property as I can subject to the exemptions allowed by law.

To have a valid assessment, in my opinion and discretion, I must have the following data or a reasonable expectation of getting it on a timely basis:

(1) The name of the owner of the subject personal property on *January 1st* of the subject year.

(2) What is the subject personal property by reasonable description.

(3) What is the value of the subject property on January 1st of the subject year.

(4) Where was the subject property on January 1st of the subject year or where was the domicile of the owner on January 1st of the subject year. The situs of the property as of January 1st is largely controlling.

(5) What is the valid address of the owner of the subject property so that a tax bill can be sent to said person with reasonable expectation of receipt.

(6) How can the owner be contacted to verify needed data if some of the above data is not readily known.

All of this data, or most of this data, is needed to lawfully assess personal property where there is no rendition because the county does not have a lien on personal property for taxes. That is, in the case of real estate we do not require the data above to the same extent that it is required of personal property, because the assessment of real property, simply and generally stated, constitutes an automatic lien or cloud upon the title to the subject real property.

The Constitution of Texas makes all non-exempt property taxable but the Constitution is not self enacting

in this regard. I must look to the various pertinent statutes to determine methods and subjects of taxation.

Various legal categories of taxable property are set by statute. It is true that all non-exempt personal property is taxable, but nevertheless various categories of property are established by the code.

For example, as a recent lawsuit is concerned, Article 7148, Vernon's Civil Statutes, provides for the handling of "merchandise" of corporations, partnerships, etc. In view of this statute and related statutes, the Tax Office has found it efficient to manage business type tax accounts differently to some degree from the other types of accounts. While not all businesses have an "inventory" per se, as a practical matter most "businesses" do have an inventory of some sort carried as such or in connection with such businesses. For instance a barbershop offers a "service" but probably has an inventory as well. A medical doctor may offer services, but might well dispense drugs or what would be considered inventory in a technical sense, such as medical supplies, etc. A lawyer may, as part of his service, and though not billed as such, hold an inventory of paper and supplies and such used in his profession. For these reasons, the tax office gathers data for "businesses", as well as all other property, since in our opinion the law categorizes them for some tax purposes.

Data is easier to acquire for merchandise businesses. Ownership is normally a matter of public record and businesses are largely open to the public for inspection without a warrant or other process. Most businesses are eager to *render* their property so that their opinion of market value of the subject property will be considered

by the assessor. The necessary data for assessment as above set forth is readily available for most of the 50,000 or more businesses in Harris County, but it is not readily available for the hundreds of thousands of non-business taxpayers in the county. I am relegated especially to renditions in the field of personal property of private individuals because my accurate data sources are very limited in that field. I will put all property on the rolls that is rendered and I will assess all property for the rolls where I can in my opinion and discretion acquire enough valid data to assess same and send out a bill with a reasonable expectation of receipt.

A tax bill is considered by law to be a mere courtesy to the taxpayer, but in the case of a nonrendering personal property taxpayer, it is crucial for any hope of collection because there is no tax lien on personal property and certainly no such taxes will be paid if no bill is received. Title to personalty cannot be meaningfully clouded by merely establishing a tax roll of personalty and the roll is a worthless and wasteful thing without a lien on personalty or without the crucial data necessary to have a reasonable expectation of collection.

Timely valid data is the key to valid assessment of personal property and without good data the tax assessor is quite hindered in his duty. In my opinion I place all property on the rolls that has been rendered or which I can validly assess based upon available data. Blind assessment is not required and in my discretion I will not engage in it. Furthermore, practices of other taxing units in this regard are questionable in my opinion in many respects, because without question much if not most non real property owners escape their taxes on much personal property.

My oath requires that I view and tax all non-exempt property in the county "as fully as may be practicable" and my staff and I do not, have not and will not under my administration, violate that oath or any other lawful oath.

/s/ CARL S. SMITH
Carl S. Smith
Assessor-Collector of Taxes

This plan written on four (4) pages and presented to the Board and Court this day has been promulgated as an aid to the Board. It is not and shall not be taken to be controlling as to any given nuance of the operations of my office and certainly exceptions exist to all general plans. This plan shall never constitute an admission, waiver or estoppel in any respect whatever and is a general statement made by the Tax Assessor-Collector's Office in his executive capacity.

EXHIBIT NO. 7

STATE OF TEXAS §
§
COUNTY OF HARRIS §

EXHIBIT

Attached herewith is a copy of the Text of House Bill 18, enacted during the Second Called Session, 65th Texas Legislature, which requires cities and other political subdivisions of the State to follow prescribed procedures related to tax levy increases and property reappraisals.

One of the highlights of House Bill 18, is Section 2, which states, "A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, . . .".

House Bill 18, commonly called "Truth in Taxation", has various other requirements which are in the interests of the taxpayer, all of which have been underscored.

Attached also is a copy of House Joint Resolution 1, commonly called the *"Tax Relief Amendment of 1978"* which will be voted on November 7 and is a very far reaching resolution that will "mandate" some exemptions and "authorize" others that will be beneficial to the general public. *This is especially so of "intangibles"—bank accounts, bonds, etc.*

Section 1 provides among other things—"The Legislature by general law shall exempt household goods not held or used for the production of income . . .". It was intended when the present Constitution was adopted for most household goods to be exempt but due to a limitation which was placed in our Constitution more than 100

years ago, most household furniture was subject to taxation. House Joint Resolution 1 would mandate this exemption.

Section 1 further states that "The Legislature by general law may exempt all or part of the personal property homestead of the family or single adult, 'personal property homestead' meaning that personal property exempt by law from forced sale for debt . . .". This provision has been construed to mean that the Legislature may exempt *personal motor vehicles* from property tax which is a form of tax relief that will help the average citizen.

Another feature of House Joint Resolution 1 is the provision in Section 1-D-1 (a) which states that "To promote the preservation of open-space land, the Legislature shall provide by general law for taxation of open-space land devoted to farm or range purposes on the basis of its productive capacity . . .".

This section would be very beneficial to the farming community inasmuch as the assessor would be required to assess according to productivity of the land.

/s/ CARL S. SMITH
Carl S. Smith
Tax Assessor-Collector
Harris County, Texas

TEXT OF H.B. 18—Truth In Taxation

* * *

. . . The assessor shall publicize that rate in a manner designed to come to the attention of all residents and submit the rate to the governing body of the unit.

SECTION 2. LIMITATIONS ON INCREASING EFFECTIVE RATE. A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the governing body may not adopt a tax rate that exceeds the rate calculated and announced under Section 1 of this Act by more than three percent until it has given public notice of its intention to adopt a higher rate and has held a public hearing on the proposed increase.

SECTION 3. NOTICE AND PUBLIC HEARING ON INCREASE. [a] A public hearing required by this Act may not be held before the seventh day after the date the notice of intent to increase the tax rate is given. The hearing must be on a weekday that is not a public holiday and must begin after 5 p.m. and before 9 p.m. The hearing must be held in a public building inside the geographical boundaries of the taxing unit. If no public building is available, the hearing may be held in some other suitable building inside the geographical boundaries of the unit. At the hearing, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.

[b] The notice of a public hearing may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type. The notice must be in the following form:

"NOTICE OF TAX INCREASE

"The [name of the taxing unit] proposes to increase your property taxes by [percentage of increase over the rate submitted under Section 1 of this Act] percent.

"A public hearing on the increase will be held on [date and time] at [meeting place].

"[Names of all members of the governing body, showing how each voted on the proposal to raise taxes and, if one or more were absent, indicating the absences.]"

[c] The notice may be mailed by first-class mail to each registered voter residing in the unit or it may be published in a newspaper. If the notice is published in a newspaper, it may not be in the part of the paper in which legal notices and classified advertisements appear.

SECTION 4. ADOPTION OF INCREASED TAX RATE. (a) At the public hearing the governing body shall announce the date, time, and place of the meeting at which it will vote on the proposed tax increase. After the hearing it shall give notice of the meeting in the form and manner provided by Section 3 of this Act, except that the second paragraph of the notice must state:

"A public meeting to vote on the proposed increase will be held on [date and time] at [meeting place]."

[b] The meeting to vote on the increase may not be earlier than the 3rd day or later than the 14th day after the date of the public hearing. The meeting must be held in a public building inside the geographical boundaries of the taxing unit. If no public building is available, the meeting may be held in some other suitable building inside the geographical boundaries of the unit. If the governing body does not adopt the increase by the 14th

day, it must give a new notice under Subsection [a] of this section before it may adopt a rate higher than that announced under Section 1 of this Act.

* * *

SECTION 5. NOTICE OF REAPPRAISAL. [a] Not later than the 20th day before the date the board of equalization for a taxing unit begins holding public hearings, the assessor for the unit shall mail a written notice to each property owner whose property value has been increased by more than $100 above its value in the preceding year.

The assessor shall include in the notice:

[1] the value of the property in the preceding year;

[2] the amount of taxes imposed on the property the preceding year;

[3] the value of the property for the current year; and

[4] the amount of taxes that will be imposed on the basis of that value if neither the tax rate nor the ratio of assessment in effect for the unit in the preceding year is reduced.

TEXT OF H.J.R. 1—The Tax Relief Amendment Of 1978

* * *

. . . *It may also tax incomes of both natural persons and corporations other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax.*

The Legislature by general law shall exempt (Provided, that two hundred and fifty dollars worth of) household goods not held or used for the production of income and personal effects not held or used for the production of income, and the Legislature by general law may exempt all or part of the personal property homestead of a family or single adult, "personal property homestead" meaning that personal property exempt by law from forced sale for debt, (and kitchen furniture, belonging to each family in this State shall be exempt) from *ad valorem* taxation.

* * *

Sec. 1-d-1. [a] To promote the perservation of open-space land, the legislature shall provide by general law for taxation of open-space land devoted to farm or ranch purposes on the basis of its productive capacity and may provide by general law for taxation of open-space land devoted to timber production on the basis of its productive capacity. The legislature by general law may provide eligibility limitations under this section and may impose sanctions in furtherance of the taxation policy of this section.

* * *

Sec. 21. [a] Subject to any exceptions prescribed by general law, the total amount of property taxes imposed by a political subdivision in any year may not exceed the total amount of property taxes imposed by that subdivision in the preceding year unless the governing body of the subdivision gives notice of its intent to consider an increase in taxes and holds a public hearing on the proposed increase before it increases those total taxes. The legislature shall prescribe by law the form, content, timing, and methods of giving the notice and the rules for the conduct of the hearing.

* * *

(c) The legislature by general law shall require that, subject to reasonable exceptions, a property owner be given notice of a revaluation and of the amount of taxes that will result from the reappraised value if neither the tax rate nor the ratio of assessment in effect in the preceding year is reduced. The notice must be given before the procedures required in Subsection [a] are instituted.

* * *

[b] Administrative and judicial enforcement of uniform standards and procedures for appraisal of property for ad valorem tax purposes, as prescribed by general law, shall originate in the county where the tax is imposed, except that the legislature may provide by general law for political subdivisions with boundaries extending outside the county.